

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

HAROLD WINGETT)	
Claimant)	
VS.)	
)	Docket No. 267,704
TRANS WORLD AIRLINES, INC.)	
Respondent)	
AND)	
)	
INSURANCE CO. STATE OF PENNSYLVANIA)	
Insurance Carrier)	

ORDER

Respondent and its insurance carrier appealed the preliminary hearing Order dated August 28, 2001, entered by Administrative Law Judge John D. Clark.

ISSUES

Claimant alleges injuries to his neck, back, hips, legs and psychological injury from a series of accidents beginning February 2, 2000 and ending May 23, 2001, his last day worked. Respondent admits the compensability of claimant's claim for a hemorrhoidal injury sustained on February 2, 2000 but denies all other claims as not arising out of and in the course of employment and also contends there was a lack of timely notice of these alleged injuries by a series of accidents.

FINDINGS OF FACT

After reviewing the record compiled to date, the Appeals Board finds:

1. At the time of his retirement, Harold Wingett was a 51-year-old crew chief for TWA. He worked 31 years for respondent. When confronted with the prospect of a disciplinary proceeding for violation of company rules which could have resulted in his termination, claimant elected to take early retirement effective June 1, 2001. His last day of actual work for respondent was May 23, 2001. In his resignation letter of May 29, 2001, Mr. Wingett related that the pain in his back and feet prevented him from performing his job.¹

¹ Respondent's Exhibit 2.

2. On February 2, 2000 claimant was injured while loading bags at work. Claimant testified that he grabbed a bag weighing 40 to 50 pounds and felt a sharp pain in his low back and rectum area. He immediately experienced bleeding from his rectum. Claimant reported the accident to his station manager, Maxine Wells, and completed an accident report. The injury was reported as a sharp pain shooting into his rectum. He was referred to the company physician, Dr. Michael W. Shuck, who subsequently referred claimant to a general surgeon, Dr. Bruce W. Thomas.

3. Dr. Thomas performed a hemorrhoidal banding and colonoscopy on February 7, 2000. The symptoms claimant reported to Dr. Thomas included back and hip pain, numbness in his leg, and pain down into the toes. On March 7, 2000, Dr. Thomas issued a report indicating claimant's complaints included not only hemorrhoids but also hip and back pain.² This report was delivered to respondent. Dr. Thomas returned claimant to work on April 7, 2000. Thereafter, claimant performed his regular job duties until May 23, 2001.

4. Although claimant did not ask respondent for medical treatment at that time, claimant did file a report of low back, hip, leg, knee and neck complaints with Ms. Wells in July and discussed his back symptoms with Ms. Wells again in November of 2000. In July 2000 an incident report called a precautionary report was prepared. Claimant was not sent to a physician at that time because it was not specifically requested. In November 2000, claimant had an informal meeting with Ms. Wells concerning his attendance. At that time, claimant again mentioned physical difficulties he was having, and specifically described these problems as work related.³

5. Claimant not only reported his back problems to his supervisor in July and November of 2000 but again in April 2001. Claimant's supervisor, Maxine Wells, recalled claimant complained about his back "on numerous occasions". Although claimant may not have always specifically related these back complaints to a work related accident, the complaints were made to his supervisor in the context of performing his job. Ms. Wells never asked if these symptoms were caused by the work activities. Ms. Wells characterized claimant as a "chronic complainer", a characterization claimant agreed with.

6. Because respondent refused to authorize claimant to return to Dr. Thomas in April 2001 when he requested it, claimant eventually went on his own to his personal physician, Dr. William C. Loewen. Claimant testified that he discussed his back, hip and leg pain with Dr. Loewen, but Dr. Loewen's 2001 records make no mention of back pain or a work related back injury until after May 23, 2001.

² Respondent's Exhibit 4.

³ Respondent's Exhibit 3.

7. Claimant had preexisting back problems including prior workers compensation claims against respondent for back injuries, but was under no restrictions. Following his return to work from hemorrhoid surgery, claimant continued to experience back symptoms. Although claimant believed that his February 2000 accident and subsequent work activity had caused an aggravation of his preexisting back condition, respondent and its insurance carrier refused to provide treatment, apparently relating claimant's back symptoms to his preexisting condition.

8. Claimant acknowledged his familiarity with respondent's accident reporting requirement and with the workers compensation system. He acknowledged having filed at least four separate workers compensation claims against respondent since 1978, including claims for low back, neck, hip and leg injuries resulting in settlement awards.

9. In addition to the admitted numerous oral reports of back pain and the March 7, 2000 note by Dr. Thomas describing back and hip pain following claimant's February 2, 2000 accident, respondent also had written reports of work related back symptoms in July and November 2000. Claimant's termination letter of May 29, 2001 referred to back and foot pain. Claimant also provided respondent with a note from his psychological counselor at Prairie View dated May 30, 2001 describing "acute symptoms of depression due to pain." On June 11, 2001 an MRI was performed that showed changes in claimant's low back which had not been present on the MRI done in 1997.

CONCLUSIONS OF LAW

1. For an injury to be compensable, a claimant must prove that the injury was caused by an accident which arose out of and occurred in the course of employment.⁴ An injury is also compensable under the Workers Compensation Act even where the accident only serves to aggravate a preexisting condition.⁵ In such cases, the test is not whether the accident caused the condition, but whether the accident aggravated or accelerated a preexisting condition.⁶

2. Workers have the burden of proof to establish their rights to compensation and to prove the various conditions upon which those rights depend.⁷

⁴ K.S.A. 44-501(a).

⁵ Odell v. Unified School District, 206 Kan. 752, 481 P.2d 974 (1971); Hanson v. Logan U.S.D. 326, 28 Kan. App. 2d 92, 11 P.3d 1184, *rev. denied* ____ Kan. ____ (2001).

⁶ Woodward v. Beech Aircraft Corporation, 24 Kan. App. 2d 510, 949 P.2d 1149 (1997).

⁷ K.S.A. 44-501(a).

3. "Burden of proof" means the burden to persuade by a preponderance of the credible evidence that a party's position on an issue is more probably true than not when considering the whole record.⁸

4. Claimant proved that he gave respondent notice within ten days of his accident. The Board has held in the past, and continues to hold, that an injured worker is neither required to diagnose his or her condition nor list each and every affected body part before satisfying the notice requirements set forth in K.S.A. 44-520. Generally, notice to the employer of either the accident or the accidental injury is sufficient.

5. In addition, as claimant has proven that he injured his back while working for respondent, the request for preliminary hearing benefits was properly granted.

6. As provided by the Workers Compensation Act, preliminary hearing findings are not binding but subject to modification upon a full hearing of the claim.⁹

WHEREFORE, the Appeals Board affirms the August 28, 2001 preliminary hearing Order entered by Administrative Law Judge John D. Clark.

IT IS SO ORDERED.

Dated this ____ day of November 2001.

BOARD MEMBER

c: Joseph Seiwert, Attorney for Claimant
Vincent A. Burnett, Attorney for Respondent
John D. Clark, Administrative Law Judge
Philip S. Harness, Workers Compensation Director

⁸ K.S.A. 44-508(g).

⁹ K.S.A. 44-534a(a)(2).